

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner  
Marshall Johnson  
Ken Nickolai  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of Minnesota Power's Petition for  
Approval of an Affiliated Interest Agreement  
with Enventis Telecom, Inc.

ISSUE DATE: August 2, 2004

DOCKET NO. E-015/M-03-2019

ORDER APPROVING AGREEMENT AS  
MODIFIED AND CLARIFIED

**PROCEDURAL HISTORY**

On December 30, 2003, Minnesota Power (MP or the Company) requested that the Commission approve an affiliated interest agreement between MP and Enventis Telecom, with approval effective beginning July 31, 2001.

On January 29, 2004, the Minnesota Department of Commerce (the Department) filed Comments.

On February 11, 2004, the Company filed Reply Comments.

The Commission met on July 8, 2004 to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. MP'S INITIAL REQUEST**

MP initially requested that the Commission

1. approve its affiliated interest agreements with Enventis, commencing July 31, 2001 to present and continuing; and
2. grant a variance to the requirement in the Commission's September 14, 1998 Order in Docket No. E,G999/CI-98-651 that a utility executing a contract or arrangement with an affiliate must make a miscellaneous filing that satisfies the requirements of Minn. Rules, Part 7825.2200, B within 30 days of executing the contract.<sup>1</sup>

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<sup>1</sup> The 30-day filing requirement is contained in the Minimum Filing Requirements for All Affiliate Interest Filings, which were adopted by the Commission in the September 14, 1998 Order and described in ATTACHMENT A to the Order.

## **II. THE DEPARTMENT'S COMMENTS**

While noting that the Company did not request Commission approval within the 30-day period directed by the Commission's September 14, 1998 Order in Docket No. E, G-999/CI-98-651, the Department recommended that the Commission review the affiliated agreements at issue in this docket on their merits rather than on the lateness of the filing.

The Department analyzed MP's request as presenting two separate affiliated interest agreements: Agreement One, transactions occurring between July 31, 2001 (the date that MP purchased Enventis) and February 28, 2002, and Agreement Two, beginning March 2002 and ongoing. The Department stated that during these two periods the manner in which MP obtained Information Technology (IT) products from Enventis differed so markedly as to warrant viewing the periods as being subject to two distinct agreements. Pursuant to Agreement One, the Department noted, MP used four methods to purchase Cisco Systems from Enventis: request for quote, previous price comparison, threshold pricing, and rush order. Agreement Two by contrast is an ongoing blanket purchase order for Cisco Systems and other IT equipment from Enventis.

As to Agreement One, which covered transactions occurring between July 31, 2001 (the date that MP purchased Enventis) and February 28, 2002, the Department recommended that the Commission decline to review it because MP no longer purchases products from Enventis under Agreement One and, therefore, costs incurred pursuant to Agreement One would likely not be part of a test-year cost analysis in a future rate proceeding. The Department stated that MP should be required to confirm in its next rate case filing that no costs from Agreement One are included in test-year costs or, if any costs from Agreement One affect MP's test-year costs, MP should be required to provide full support for the prudence of the costs.

Regarding Agreement Two, the Department recommended that the Commission disapprove that agreement because it is a blanket purchase order (no bidding process or other procedure to ensure that the lowest cost provider is chosen) and contains no sunset provision. The Department stated that MP's assertion that Enventis sold its products to MP at cost did not show that Enventis had an absolute price advantage over competitors that supply Cisco products. The Department also stated that MP has provided no evidence to support its claim that its periodic spot check of pricing has demonstrated savings of 10-20 percent over Enventis' competitors.

While recommending rejection of Agreement Two, the Department stated that there were certain actions that MP could take to alleviate the Department's concerns. For example, the Department stated, MP could set up a competitive bidding process for IT purchases for one year and refile a petition demonstrating whether Enventis was indeed the lowest-cost supplier of those IT products.

## **III. MP'S REPLY TO THE DEPARTMENT'S RECOMMENDATIONS**

In reply comments, MP accepted the Department's analysis that the Company's filing presented, in essence, two agreements.

Regarding Agreement One, MP did not press for approval of that agreement and accepted the Department's recommendation that the Company provide additional support if costs from Agreement One are included in the next rate case test-year and, if costs from Agreement One do not fall within the rate case test-year, to provide a statement to that effect.

As to Agreement Two, MP initially objected that compliance filings and ongoing Commission oversight would adequately address the Department's concern about the lack of a "sunset" provision. MP also objected that competitive bidding is not the only way to assure that purchases are reasonable and in the public interest. Indeed, MP asserted competitive bidding would likely increase the Company's cost for Cisco System products because without a standing order, Enventis would no longer have the same incentive to provide Cisco Systems products to MP at cost.

MP concluded, however, that to address the Department's concerns and to properly focus the docket on future purchasing activity, it would suspend purchases under Agreement Two (the existing standing purchase order) and instead use a competitive bidding process to purchase from Enventis as of February 1, 2004. Specifically, MP stated that it would use its standard competitive bidding procedures to purchase Cisco System products, such as the Request for Quote method as used in Agreement One or a reverse auction bidding process. At the hearing, MP clarified that its agreement to use its standard competitive bidding procedures to purchase Cisco System products means it will be purchasing these products from whatever company submits the lowest bid.

The Company also agreed to provide, in its next general rate case filing, either support for the prudence of any costs from Agreement Two that are included in MP's test-year costs or a statement that no costs from Agreement Two are included in the test-year.

#### **IV. COMMISSION ANALYSIS AND ACTION**

##### **A. Procedural Matter**

The 30-day filing requirement with which MP did not comply is imposed by Commission Order rather than Commission rule.<sup>2</sup> The rule variance standards initially cited by MP are therefore inapplicable.

With respect to the Company's non-compliance with the 1998 Order's 30-day filing requirement, the Commission accepts MP's explanation that this was an isolated oversight that it sincerely regrets and has taken steps to avoid in the future. The Commission notes that there is no showing in the record that any party has been injured or prejudiced by MP's action or inaction. Most important, the Commission finds that MP is not chargeable with contumacy or intentional violation of the Commission's Order. In these circumstances, no further action is warranted regarding the Company's late-filing. The Commission will take the Department's recommendation to review the affiliated agreements at issue in this docket on their merits rather than on the lateness of the filing.

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<sup>2</sup> In its September 14, 1998 Order in Docket No. E,G999/CI-98-651 the Commission required that a utility executing a contract or arrangement with an affiliate must make a miscellaneous filing that satisfies the requirements of Minn. Rules, Part 7825.2200, B within 30 days of executing the contract. See the Minimum Filing Requirements for All Affiliate Interest Filings which were adopted by the Commission in the September 14, 1998 Order and described in ATTACHMENT A to the Order.

## **B. MP's Affiliated Interest Agreements With Enventis**

The parties agreed that MP's filing should be analyzed as presenting two different affiliated interest agreements: Agreement One, which covers transactions occurring between July 31, 2001 (the date that MP purchased Enventis) and February 28, 2002, and Agreement Two, beginning March 2002 and ongoing. The Commission also finds that this approach is appropriate.

### **1. Agreement One**

The Department recommended that the Commission decline to review Agreement One because MP no longer purchases products from Enventis under Agreement One and, therefore, costs incurred pursuant to Agreement One would likely not be part of a test-year cost analysis in a future rate proceeding. The Department stated that MP should be required to confirm in its next rate case filing that no costs from Agreement One are included in test-year costs or, if any costs from Agreement One affect MP's test-year costs, MP should be required to provide full support for the prudence of the costs. In Reply Comments, MP agreed with the Department's recommendations.

The Commission finds that the Department's recommendations are sound and will adopt them.

### **2. Agreement 2**

Regarding Agreement Two, the Department initially recommended rejection but added that there were certain actions that MP could take to alleviate the Department's concerns. For example, the Department stated, MP could set up a competitive bidding process for IT purchases for one year and refile a petition demonstrating whether Enventis was indeed the lowest-cost supplier of those IT products.

In Reply Comments, MP agreed to suspend purchases under Agreement Two (the existing standing purchase order) and instead use a competitive bidding process to purchase from Enventis as of February 1, 2004. Specifically, MP stated that it would use its standard competitive bidding procedures to purchase Cisco System products, such as the Request for Quote method as used in Agreement One or a reverse auction bidding process. At the hearing, MP clarified that its agreement to use its standard competitive bidding procedures to purchase Cisco System products means it will be purchasing these products from whatever company submits the lowest bid.

The Company also agreed to provide, in its next general rate case filing, either support for the prudence of any costs from Agreement Two that are included in MP's test-year costs or a statement that no costs from Agreement Two are included in the test-year.

The Commission shares the concerns expressed by the Department but finds that MP's proposed actions with respect to Agreement Two, as proposed in its Reply Comments and clarified at the hearing, render Agreement Two acceptable. To ensure on-going compliance with Agreement Two as MP has agreed to modify it, this Order will direct the Company to abide by those changes.

## **ORDER**

1. The Commission declines to act on the request for approval of Agreement One. In its next rate-case filing, MP shall provide either support for the prudence of any costs from Agreement One that are included in the Company's test year costs, or a statement that no costs from Agreement One are included in test year costs.

2. The Commission hereby approves Agreement Two, modified as follows: MP's standing order with Enventis is suspended; in its place, MP shall use a competitive bidding process for all items formerly subject to that standing order and shall always purchase from the lowest bidder identified by the competitive bidding process. The Commission's approval is forward looking and is silent on transactions prior to approval.
3. In its next rate case, MP shall provide either support for the prudence of any costs from Agreement Two that are included in MP's test year costs or a statement that no costs from this agreement are included in the test year.
4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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